

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown  
classification; PHOENIX DIGITAL GROUP  
LLC, an Arizona limited liability company;  
JEFFREY CONWAY, an individual; DAVID  
SCHAEFER, an individual; JORDAN GREEN,  
an individual; and JAMES MAY, an individual,  
Defendants.

Cause No. 2:21-cv-0811 TSZ

**REPLY IN SUPPORT OF  
DEFENDANTS' MOTION TO  
DISMISS AND/OR REFER TO  
MANDATORY ARBITRATION**

**Note on Motion Calendar:  
February 18, 2022**

**Oral Argument Requested**

Defendants, in response to Bungie, Inc.'s Opposition and in further support of their Motion to Dismiss, hereby state as follows:

**I. INTRODUCTION**

Simply repeating false and baseless statements does not make them true. Bungie can't change what its Complaint and supporting papers actually say. The Complaint *actually filed by Bungie*: (1) provides no detail whatsoever as to how Defendants supposedly "copied" Bungie's purported works, (2) provides no showing whatsoever that Defendants actually "copied" any of Bungie's purported works, (3) makes the legally and factually impossible claim that Defendants "copied" two works *before those works were even in existence*, (4) makes no showing whatsoever that Defendants made any use at all of any purported trademark owned by Bungie, (5) fails even to allege, much less detail, *any* connection

1 between Mr. May and the remaining Defendants, and (6) now relies on a purported term of a  
 2 Limited Software License Agreement that does not appear in the Exhibit Bungie *actually filed*  
 3 with the Court.

4 Rather than accept bluff and bluster, this Court should instead apply the clear  
 5 precedent of *Twombly* and *Iqbal* and either dismiss this action entirely or, at minimum, order  
 6 the filing of an Amended Complaint that at least makes “plausible” allegations.

## 7 II. RESPONSE

### 8 A. Bungie Is Blowing Smoke

9 Lacking any evidence to make a plausible claim as required by *Twombly* and *Iqbal*,  
 10 Bungie, in its Opposition instead makes bald assertions that either (1) have no factual basis  
 11 whatsoever, (2) are clearly *not* unlawful, or (3) are absurd on their face.

12 Bungie at pages 2 and 3 of its Opposition claims that, “Throughout [its] complaint,” it  
 13 “details Defendants’ infringement of the Destiny Copyright” citing to “¶¶ 49–50, 53, 55, 70–  
 14 71” of its Complaint. But what do these paragraphs *actually* say?

15 Paragraphs 49 of the Complaint says, “Defendants created, advertised, sold, and  
 16 distributed cheat software, including for Destiny 2, while Paragraph 50 says, “Defendants  
 17 advertised and sold their cheats through their website, AimJunkies.com. Defendants’ sold  
 18 their cheat, Destiny 2 Hacks, for \$34.95/month.” A simple, fair reading shows that neither of  
 19 these paragraphs alleges *anything* unlawful. Again, it is not unlawful *per se* to sell or  
 20 otherwise distribute what Bungie calls, “cheat software.” (If Bungie contends otherwise, it has  
 21 not cited any law to that effect.) To the extent Bungie seeks relief in this action, it must  
 22 identify controlling law, such as copyright or trademark law, and, more importantly, must  
 23 allege and establish liability under the requirements of *those* laws, not by way of vague  
 24 accusations that “cheating” in computer games is a violation of some imaginary law.

25 Paragraph 53 of the Complaint alleges:

26 Destiny 2 players who purchase and deploy Defendants’ cheat may be given an  
 27 unfair advantage over non-cheating Destiny 2 players. For example, Defendants’  
 28 ‘Destiny 2 Aimbot’ claims to automatically aim at enemy players without

1 requiring input from the cheat user; the ‘Destiny 2 No Recoil’ purports to  
 2 eliminate recoil from weapons, allowing the user to stay locked on to his/her  
 3 enemies; and the ‘ESP’ feature purportedly allows the cheat user to see players  
 and items through walls, which non-cheating players cannot do.

4 (Complaint ¶53.) Again, *nothing* alleged in Paragraph 53 of the Complaint is unlawful  
 5 or can form the basis for a “plausible” cause of action. Paragraph 53 simply does not  
 6 provide the “detail” Bungie alleges.

7 Paragraph 55 of the Complaint says, “On information and belief, Defendants copied  
 8 and distributed Bungie’s copyrighted works in order to reverse engineer, disassemble,  
 9 decompile, decrypt, and modify those works without Bungie’s authorization.” That is the  
 10 *entirety* of Bungie’s “detailed” allegation of copying. Indeed, the use of “On information  
 11 and belief” in this paragraph suggests that Bungie has no actual facts to back up its claim and  
 12 hopes that a discovery “fishing expedition” might turn up something to support its unfounded  
 13 claim. This is *precisely* the type of “formulaic recitation of the elements of a cause of action”  
 14 that the Supreme Court itself properly proscribed in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).  
 15 How this is not a “bare bones” pleading is difficult if not impossible to see.

16 Paragraph 70 of the Complaint says, “Defendants’ cheat software infringes Bungie’s  
 17 Destiny Copyrights by copying, producing, preparing unauthorized derivative works from,  
 18 distributing and/or displaying Destiny publicly all without Bungie’s permission.” Again, this  
 19 is nothing more than “an unadorned, the-defendant-unlawfully-harmed-me accusation,” which  
 20 the Supreme Court expressly proscribed in *Iqbal*, 556 U.S. at 678.

21 Finally, Paragraph 71 of the Complaint says, “Defendants’ copies, reproductions,  
 22 derivative works, and/or displays are identical or substantially similar to the copyrighted  
 23 works.” As noted in Defendants Motion (Dkt#28), the Complaint nowhere even refers to  
 24 “copies, reproductions...or displays” except in this paragraph, and it is impossible to know  
 25 what Bungie believes they are. That is insufficient. *See, Somerset Commc’ns Grp., LLC v.*  
 26 *Wall to Wall Adver., Inc.*, No. C13-2084-JCC, at \*5 (W.D. Wash. May 6, 2014) (“A court is  
 27 not required to accept as true, however, ‘allegations that are merely conclusory, unwarranted  
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1 deductions of fact, or unreasonable inferences,” *citing In re Gilead Sciences Sec. Litig.*, 536  
 2 F.3d 1049, 1055 (9th Cir. 2008)). *Nowhere* does this paragraph provide support for this bald,  
 3 bare bones, formulaic and unadorned, “the-defendant unlawfully-harmed-me accusation” that  
 4 no longer passes muster under clear law. Bungie argues that its allegations of infringement  
 5 are “detailed” by pointing to the very paragraphs that prove otherwise.

6 Ironically, Bungie itself correctly notes at p. 4 of its Opposition, that, “A claim has  
 7 facial plausibility *when the pleaded factual content* allows a court to draw the reasonable  
 8 inference that the defendant is liable for the misconduct alleged.” But there is no actual  
 9 “factual content” pleaded. According to Bungie, this Court can make a “reasonable inference  
 10 that defendant is liable for misconduct alleged” simply because Bungie says that it is. By this  
 11 reasoning, this Court can also “reasonably infer” that the world is flat because at least some  
 12 people claim it is, or that space aliens routinely kidnap and examine humans simply because  
 13 other people claim actually to have been abducted. This sort of pleading chicanery is  
 14 precisely what the Supreme Court properly ended with *Twombly* and *Iqbal* and should not be  
 15 endorsed by any court that takes its role seriously.

16 Similarly, Bungie’s claims regarding Defendants’ supposed “admissions” are equally  
 17 disingenuous and contrary to fact. In particular, Bungie, at p. 2 of its Opposition, claims that:

18 Although Defendants claim to have stopped selling the cheat as of November 12,  
 19 2020...Bungie identified a toolset connected with Defendants’ cheat software on  
 20 its Destiny 2 servers in or around June 2021, indicating that Defendants were  
 21 continuing to develop their Destiny 2 cheat software immediately before the  
 22 complaint was filed.

23 (Bungie Opposition, p. 2) Bungie, in footnote 2 at p. 5 of its Opposition, further claims that,  
 24 “Defendant David Schaefer even admits Defendants distributed and sold the alleged cheat  
 25 software by “offer[ing it] to the public at least as early as April 2019” and admitting to at least  
 26 \$27,748 in revenue from sales of the cheat software.” In support of these claims, Bungie cites  
 27 to paragraphs 3 and 7-9 of Mr. Schaefer’s declaration, (Dkt. #28-5). Again, an actual review  
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1 of the Mr. Schaefer's declaration testimony shows that Bungie once again overstates and  
2 misrepresents what was actually said.

3 At Paragraph 7 of his declaration (Dkt. #28-5 at ¶ 7), Mr. Schaefer accurately and  
4 truthfully states that, "Phoenix Digital Group complied with Bungie's demand and ceased  
5 further distribution of the products on Nov 12<sup>th</sup> 2020." Bungie unfairly labels Mr. Schaefer a  
6 liar, however, by making the bald assertion that, "Bungie identified a toolset connected with  
7 Defendants' cheat software on its Destiny 2 servers in or around June 2021, indicating that  
8 Defendants were continuing to develop their Destiny 2 cheat software immediately before the  
9 complaint was filed." (Opposition, p. 2.)

10 As Bungie no doubt knows and conveniently omits to tell the Court, is that any such  
11 "identification" made by Bungie "in or around June 2021" was of a third party who had likely  
12 purchased the Phoenix Digital product long before and subsequently used it long after  
13 Phoenix Digital ceased selling it. Unlike Defendants, Bungie knows *exactly* what appears "on  
14 its Destiny 2 servers" and, again unlike Defendants, knows who the party accessing the  
15 servers actually was. Mr. Schaefer's testimony remains true. Bungie's failure to identify just  
16 who was supposedly accessing its servers in June, 2021 strongly suggests that it was not the  
17 Defendants but someone else. Indeed, had it been any of the Defendants, Bungie would no  
18 doubt have made that, "Exhibit A" in its opposition.

19 Similarly, when Bungie accuses Mr. Schaefer of "admit[ing] [that] Defendants  
20 distributed and sold the alleged cheat software" and cites to paragraphs 3, 7–9 of his  
21 declaration in support, a review of the actual language indicates that Mr. Schaefer made no  
22 such admission. In all cases, his testimony was that "Phoenix Digital Group" distributed the  
23 subject products and made the sales, not "Defendants" as Bungie falsely claims.

24 These transparent misrepresentations of Mr. Schaefer's actual testimony appear to be  
25 simply further attempts by Bungie to smear Defendants through innuendo and false  
26 accusation, rather than make a real case through actual evidence. Again, it is for this reason  
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1 that the law, as clarified by *Twombly* and *Iqbal*, requires detailed and plausible pleadings  
 2 based on actual fact rather than suspicion and false accusation.

3 In short, Bungie’s circular argument that its claims are detailed because they are  
 4 detailed (which they are not) begs the question and does not cure the fatal flaws in the  
 5 Complaint it actually filed, not the one it pretends it did. Its further reliance on supposed  
 6 “admissions” that were never made is further testimony to the inadequacy of its pleadings.

7 **B. The Complaint Fails To Plead A Plausible Claim Of Copyright Infringement**

8 The sole allegations purporting to set out a plausible claim for copyright infringement  
 9 are those addressed above. As has been shown, these amount to nothing more than bare  
 10 bones, unadorned accusations that Defendants “copied” Bungie’s supposedly copyrighted  
 11 works. Nowhere does Bungie even show what its “works” look like, much less show an  
 12 actual sample of Bungie’s purportedly infringing work to permit comparison. “Substantial  
 13 similarity” is the definitive test in the Ninth Circuit and elsewhere for assessing whether a  
 14 disputed work was “copied.” Here, Bungie fails not only to allege or otherwise show  
 15 “substantial similarity,” it fails to provide any materials whatsoever that can even be  
 16 compared. Nowhere in the Complaint or its exhibits is there a depiction of Bungie’s  
 17 supposedly copyrighted work. Nowhere is there a depiction of Defendants’ supposedly  
 18 infringing works. Again, we are supposed to accept that Defendants “copied” Bungie’s works  
 19 on Bungie’s say-so alone. There is no way that Defendants or this Court can make even a  
 20 preliminary assessment as to whether substantial similarity exists between the works, and the  
 21 *only* basis Bungie provides for substantiating its claim of infringement is that it says so. That  
 22 does not pass legal muster under the clear *Twombly* and *Iqbal* standards.

23 Bungie’s citations to two unreported decisions of courts in New York and the Central  
 24 District of California are unavailing. In the first of these, (*Take-Two Interactive Software,*  
 25 *Inc. v. Zipperer*) the Complaint was far more detailed as to the defendant’s conduct than here,  
 26 and it was expressly alleged in that case that the defendant “created and distributed computer  
 27 programs which are alternative versions of [plaintiff’s video game] based on [plaintiff’s video  
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1 game].” Here there is no allegation whatsoever that Defendants, “created and distributed  
2 computer programs *which are alternative versions of Bungie’s video game.*” Nor can there be  
3 for the reason that the accused software here is *not* an “alternative version” of Bungie’s game  
4 and Bungie knows that. Had such been the case, Bungie could easily have included screen  
5 shots of its game and Phoenix Digital’s (non existent) “game” and thus shown any  
6 similarities. Bungie hasn’t done so because *it cannot*. Defendants have simply not provided  
7 an “alternative version” of Plaintiff’s game and Bungie has not even claimed there is one.

8 Similarly, Bungie’s citation to *Blizzard Entm’t, Inc. v. Bossland GmbH* should be  
9 given little weight in that that case was a default judgment where no one appeared to  
10 challenge the Plaintiff’s allegations. As reliable precedent, default judgments are thin reeds  
11 on which to base a reasoned decision. Defendants’ rights here should not be compromised  
12 simply because a different defendant in a different case chose not to appear and defend  
13 against different claims made in *that* case.

14 Importantly, Bungie side-steps the fatal flaw that Defendants *could not* have copied at  
15 least two of the works for the very simple reason that Defendants’ accused works were  
16 indisputably created *before* Bungie, by its own admission, published the works, thereby  
17 making them available to others. Bungie makes the legally flawed argument that because  
18 Defendants’ accused work was sold for two or three weeks after Bungie’s works were first  
19 published, this avoids the problem. Nonsense. The relevant question is how Defendants  
20 could possibly have had the legally necessary “access” to a work *that was not even in*  
21 *existence* at the time the work was allegedly copied. Nor is its suggestion that Defendants  
22 *might* have changed their product at some point availing. Nowhere does Bungie even  
23 describe the content of Defendants’ product much less show that such content changed at any  
24 time, either before or after first publication of the subject works. Bungie is clutching at  
25 straws. It is surprising that, rather than simply admit a mistake in this regard and withdraw its  
26 flawed claims as to the two subject works, Bungie instead insults the intelligence of this Court  
27 by making such a logically and legally flawed argument.

1 **C. Bungie Side Steps The Trademark Issues**

2 Bungie spends considerable effort demonstrating that it owns various trademarks.  
3 Importantly, Defendants have never contended otherwise. What Defendants do challenge,  
4 and what Bungie does not and cannot show, is any purported misuse on Defendants' part of  
5 Bungies' trademarks. The fact remains that Defendants have made no use whatsoever of  
6 Bungie's trademarks other than in a clear "fair use" manner. And Defendants cannot raise  
7 such a defense until and unless Bungie identifies which of its marks Defendants supposedly  
8 infringed and how Defendants supposedly misused those marks. Bungie makes no such  
9 identification anywhere in its Complaint.

10 Again, nowhere in its pleadings does Bungie show actual use by Defendants of any of  
11 Bungie's purported marks. Bungie sets up a strawman argument by claiming that Defendants  
12 challenge the "likelihood of confusion" element of a viable trademark claim. However,  
13 Bungie fails to address the critical, dispositive fact that there can be no "likelihood of  
14 confusion" if Defendant's have not, in fact, actually used the disputed marks. Again, there is  
15 nothing in the Complaint that this Court can review or otherwise look at to see whether a  
16 "reasonable inference" can be made that Defendants in any way infringed Bungie's marks.

17 To allow Bungie to proceed with its alleged trademark claims without making any  
18 showing whatsoever how Defendants supposedly used Bungie's marks is a classic, "sue first,  
19 ask questions later" scenario that should not be permitted or endorsed by this or any court.  
20 How onerous could it possibly be for Bungie simply to obtain a picture, image or other  
21 sample of Defendants' product or marketing materials showing the purported misuse of the  
22 mark and include it as an exhibit to the complaint? Such happens routinely in virtually every  
23 trademark infringement case filed today. Why, then, couldn't Bungie do it here? Defendants  
24 should not be forced to respond to and defend against claims that cannot reasonably be  
25 understood.  
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**D. No Plausible Claims Against James May Are Pleaded In The Complaint**

Much as it has done throughout, Bungie claims it has viable claims against James May simply because it says so. Again, these non-existent claims do not, and cannot meet the threshold requirements of *Twombly* and *Iqbal*.

At pages 10 and 11 of its Opposition (not Complaint) Bungie states that:

1. “Bungie sued Defendant James May because, through his alleged participation in the development, maintenance, advertising, and sale of the Destiny 2 cheat software on the AimJunkies website,”;

2. “Mr. May infringed Bungie’s copyrights and trademarks, violated the anti-circumvention provisions of the Digital Millennium Copyright Act, breached his contract with Bungie, tortiously interfered with Bungie’s contracts with Destiny 2 players who use the AimJunkies cheat, and violated the Washington Consumer Protection Act.”; and

3. “Mr. May advertised and sold cheat software (Dkt. #1 at ¶¶ 49–50), created, maintained, and modified cheat software (id. at ¶ 54), copied and distributed Bungie’s copyrighted works (id. at ¶ 55), incorporated technology that circumvents Bungie’s technological protection measures (id. at ¶ 56), and accepted and breached the LSLA (id. at ¶¶ 42, 117).”

Nowhere does the Complaint allege that Mr. May, “Participat[ed] in the development, maintenance, advertising, and sale of the Destiny 2 cheat software on the AimJunkies website.” Nor does the Complaint allege that Mr. May, “advertised and sold cheat software,” or that he, “created, maintained, and modified cheat software,” or that he, “tortiously interfered with Bungie’s contracts with Destiny 2 players who use the AimJunkies cheat,” or that he, “incorporated technology that circumvents Bungie’s technological protection measures,” or that he did any of the other actions Bungie, now claims he did. These appear for the very first time in Bungies’ Opposition, not its Complaint.

Again, the only specific allegation against Mr. May is that he is an individual residing in Ohio. (See Complaint, ¶11.) Indeed, a word search of the Complaint reveals that other

1 than in the caption and introductory paragraph of the Complaint, the name “James May”  
 2 appears *only* in Paragraph 11. This is the *totality* of the allegations against Mr. May.

3 Contrary to Bungie’s brazen assertion, the Compliant makes absolutely no allegation  
 4 that Mr. May, “Participat[ed] in the development, maintenance, advertising, and sale of the  
 5 Destiny 2 cheat software on the AimJunkies website.” Mr. May has the absolute right to be  
 6 informed of the allegations made against him, and the Federal Rules require that such  
 7 allegations be made by way of a formal complaint filed in accordance with law, not by way of  
 8 attorney argument appearing for the first time on pages 10 and 11 of an opposition brief filed  
 9 eight months later.

10 Contrary to Bungie’s citations in footnote 5 at page 11 of its Opposition, courts in *this*  
 11 *circuit* routinely reject so-called, “Shotgun Pleadings” of the type filed by Bungie here:

12 Fourth, and finally, there is the relatively rare sin of **asserting multiple claims**  
 13 **against multiple defendants without specifying which of the defendants are**  
 14 **responsible** for which acts or omissions, or which of the defendants the claim is  
 15 brought against. The unifying characteristic of all types of shotgun pleadings is  
 16 that **they fail to one degree or another, and in one way or another, to give the**  
**defendants adequate notice of the claims against them and the grounds upon**  
**which each claim rests.**

17 *Weiland v. Palm Beach Cnty. Sheriff’s Office*, 792 F.3d 1313, 1323 (11th Cir. 2015)  
 18 (emphasis supplied). *See, also A.B. v. Hilton Worldwide Holdings*, 484 F. Supp. 3d 921, 943  
 19 (D. Or. 2020) Contrary to Bungie’s assertion, there is plenty of Ninth Circuit precedent to  
 20 support dismissing complaints wherein, as here, “multiple claims against multiple defendants  
 21 [are asserted] without specifying which of the defendants are responsible.”

22 The fact remains that the Complaint as filed fails to set out any plausible claim against  
 23 Mr. May, and Mr. May should be dismissed from this case entirely.  
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**E. Personal Jurisdiction Over Defendants In This District Does Not Properly Exist**

**1. Defendants Did Not “Consent” To Jurisdiction Here**

In a footnote buried on page 11 of its Opposition, Bungie confesses that the copy of the Limited Software License Agreement (“LSLA”) submitted with its Complaint fails actually to contain the language Bungie relies on to support its claim that Defendants “consented” to jurisdiction here. Having now submitted a proper copy of the LSLA, Bungie claims that the supposed “consent” arises from language reading, “(ii) you consent to the exclusive jurisdiction of the state and federal courts in King County, Washington.” However, a true reading of that language (which was missing in Bungie’s original filing) states, “*To the extent permitted by applicable law:...(ii) you consent to the exclusive jurisdiction of the state and federal courts in King County, Washington.*” (Emphasis supplied.) In the absence of any showing to the contrary, the applicable law is RCW § 4.28.185, which authorizes jurisdiction to the full extent of the federal due process clause. Even under the (now submitted) language of the LSLA, Bungie still bears the burden of establishing that exercising personal jurisdiction over the Defendants here “comports with fair play and substantial justice.”

Bungie’s claim that “By seeking to enforce the LSLA’s arbitration provision, Defendants necessarily concede that they have accepted the LSLA” is misplaced. Defendant’s make no such concession. Rather, Defendants correctly point out that, if *Bungie* seeks to enforce the LSLA, the terms of Bungie’s very own contract *demand* that such claims must be heard in arbitration. Furthermore, the LSLA *itself* expressly provides that “The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability, or formation of this Agreement, including without limitation...whether a claim is subject to arbitration.” Accordingly, under the express terms of the LSLA itself, the *arbitrator*, and not this Court, has “exclusive authority” to decide claims made by Bungie under its very own LSLA, and an *arbitration*, not a proceeding here, is the proper forum for determining whether the LSLA is binding against the Defendants.

1 This Court cannot properly invoke the purported “consent” to jurisdiction clause of the  
 2 LSLA without a prior finding by an arbitrator that the Defendants are, in fact, bound by that  
 3 contract. That simply has not yet occurred.

4 **2. None Of The Defendants Directed Their Activities Toward Washington**

5 The sole grounds for Bungie’s claim that “Defendants Purposefully Directed Their  
 6 Conduct at Washington,” consists of their operating a publicly accessible website and making  
 7 a total of \$416.22 in gross sales of the subject products in Washington. There is no evidence  
 8 whatsoever that any of the Defendants specifically directed *any* of their activities toward  
 9 Washington as opposed to virtually anyone in the world with an Internet connection, nor can  
 10 there be. None of the Defendants has any connection whatsoever with Washington State and  
 11 Bungie cannot, show otherwise.

12 Furthermore, Bungie has not only sued the corporate entity, Phoenix Digital Group  
 13 LLC, which operates the website and made the *de minimis* sales, but has also sued Messrs.  
 14 Conway, Schaefer, Green and May in their individual capacities. *There is no evidence*  
 15 *whatsoever that any of these individuals directed any activities toward the State of*  
 16 *Washington.* Apparently, Bungie believes that simply because three of these individual  
 17 defendants have an interest in Phoenix Digital, this, alone, is sufficient to confer personal  
 18 jurisdiction over them in Washington. Bungie has cited no law in support of this novel  
 19 position. Indeed, the law is contrary.” *See, Glob. Commodities Trading Grp. v. Beneficio De*  
 20 *Arroz Choloma, S.A.*, 972 F.3d 1101, 1109 (9th Cir. 2020) (“We do not impute a corporation's  
 21 forum contacts to each of the corporation's employees. *Instead, we assess whether each*  
 22 *individual had minimum contacts with the forum such that the exercise of jurisdiction over*  
 23 *that individual would comport with traditional notions of fair play and substantial justice.*”)  
 24 (Emphasis supplied). Bungie has not shown that “minimum contacts” were made by any of  
 25 the individual Defendants. Again, this is particularly true in the case of Mr. May where  
 26 Bungie has not even alleged any connection between him and the others, much less offered  
 27 any evidence of his activities here.  
 28

III CONCLUSION

For all the reasons stated herein, this action should be dismissed.

Dated February 18, 2022.

/s/ Philip P. Mann

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